

## Meadows Mental Health Policy Institute

Nelson Jarrin, JD —Testimony on Senate Bill 562, April 16, 2019

### State Hospital Capacity – April 2019<sup>1</sup>

Bed Type	Beds Available*
Max Security (MSU) -North Texas State Hospital, Vernon Campus -Rusk State Hospital	289
Non-MSU, Civil	1,867
<b>Total</b>	<b>2,156</b>

### State Hospital Waitlist – January 2019

Waiting List	Total # Waiting	# Waiting		Average Wait
		>21 Days (Forensic) or >14 Days (Civil)		
Max Security (MSU)	454	440		179 days
Forensic, non-MSU	278	205		41 days
Civil	111	38		24 days
<b>Total</b>	<b>843</b>	<b>683</b>		

### MSU Waitlist in Select Counties – January 2019

	Harris	Dallas	Bexar	Travis
Total Adult Population	3,350,000	1,900,000	1,400,000	920,000
Total # Waiting for MSU	46	61	20	31
MSU per 100,000	<b>31.0</b>	<b>67.9</b>	<b>32.0</b>	<b>77.2</b>
MSU Average Wait	187 days	178 days	172 days	147 days

<sup>1</sup> Through the State Hospital System Redesign, 70 MSU beds are being added at Kerrville State Hospital, and 60 MSU beds will be added at Rusk State Hospital (construction of a 100-bed MSU will replace 40 MSU beds and 60 non-MSU beds at Rusk, creating a net gain of 60 MSU beds).

## Current Process

Article 46B.073(c), Code of Criminal Procedure, requires a court to enter an order committing a defendant for competency restoration services to a maximum security unit (MSU) if the defendant is charged with (*not convicted of*) an offense listed in Article 17.032(a), Code of Criminal Procedure, other than an offense under Section 22.01(a)(1), Penal Code, or the indictment alleges an affirmative finding under Article 42A.054(c) or (d), Code of Criminal Procedure. An indictment will allege an affirmative finding under Article 42A.054(c) or (d), Code of Criminal Procedure, if a defendant used or exhibited a deadly weapon during the commission of the offense or immediate flight from the commission of the offense.

Through this process, judges are required to commit a defendant to a MSU for competency restoration services *based solely on the offense charged in the indictment*, without regard to the defendant's current level of functioning, a clinical assessment, or the circumstances of the offense. Judges have *no discretion* in these cases as these individuals are deemed "manifestly dangerous"<sup>2</sup> based on the alleged offense alone. Yet, as previously noted, our state hospital system has an extremely limited number of MSU beds available (306 statewide), so defendants remain in jail for an extended period, without a case disposition, delaying access to needed treatment to stabilize symptoms while awaiting admission to a MSU. Furthermore, the actual determination of manifest dangerousness is delayed until a defendant is admitted to the MSU. Based on the Meadows Mental Health Policy Institute's review of MSU cases and interviews with jail and psychiatric leaders, many individuals required to be committed to MSU do not meet a clinical standard for dangerousness despite the seriousness of the alleged offense.

When a bed opens at a MSU, the individual will be transferred from the county jail to the MSU. Once the individual arrives at the MSU, the Dangerousness Review Board<sup>3</sup> will schedule an initial hearing. The initial hearing must be scheduled to ensure the individual, if determined not manifestly dangerous, will be transferred from the MSU within 60 days after arrival. At the hearing, if the Dangerousness Review Board determines that the individual is not manifestly dangerous, the individual must be transferred from the MSU to a non-MSU facility (state hospital) within 14 days.

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<sup>2</sup> "Manifestly dangerous" is the term used to describe an individual who, despite receiving appropriate treatment, including treatment targeted to the individual's dangerousness, remains likely to endanger others and requires a maximum security environment to continue treatment and protect public safety. 25 T.A.C. Section 415.303(16).

<sup>3</sup> Article 46C.260(d), Code of Criminal Procedure, requires the Dangerousness Review Board to consist of "five members, including one psychiatrist licensed to practice medicine in [Texas] and two persons who work directly with persons with mental illnesses or with [intellectual disabilities], to determine whether the person is manifestly dangerous and, as a result of the danger the person presents, requires continued placement in a maximum security unit."

The current process is inefficient for those individuals who must wait in jails for an extended period only to be determined not manifestly dangerous at an initial hearing upon arrival at the MSU and then transported to a non-MSU receiving facility.

### **Proposed Process**

**SB 562** would amend the Code of Criminal Procedure, which currently requires a court to enter an order committing a defendant for competency restoration services to MSU if the defendant is charged with (*not convicted of*) an offense listed in Article 17.032(a), Code of Criminal Procedure, other than an offense under Section 22.01(a)(1), Penal Code, or the indictment alleges an affirmative finding under Article 42A.054(c) or (d), Code of Criminal Procedure. Under SB 562, judges would continue to enter orders committing these defendants to an inpatient (state hospital) facility. However, the Health and Human Services Commission (HHSC) would then use a team of trained clinicians, similar to the Dangerousness Review Board, to designate the appropriate state facility for treatment. These experts will look at relevant information such as circumstances of the case, clinical need, any history of violence or previous mental health treatment, input from the family, and any other information available in making this determination.

HHSC would continue to be responsible for the care of all patients in MSU and non-MSU facilities, just as HHSC is today. HHSC would also continue to be responsible for assessing manifest dangerousness. SB 562 simply streamlines the assessment process, allowing a review to happen earlier and avoid unnecessary use of limited MSU resources.

### **Impact**

**SB 562** has the potential to reduce the MSU waiting list, while reserving the state's limited MSU beds for defendants who are truly manifestly dangerous. Those individuals committed to non-MSU facilities as a result of this new process would experience shorter wait times in county jails and thus a quicker path to a treatment.